

(9) In addition to the duties specified in paragraph (f)(8) of this section, the National MSFW Monitor Advocate each year during the harvest season shall visit the four states with the highest level of MSFW activity during the prior fiscal year, if they are not scheduled for a National Office on-site review during the current fiscal year, and shall:

(i) Meet with the State MSFW Monitor Advocate and other central office staff to discuss MSFW service delivery, and (ii) contact representatives of MSFW organizations and interested employer organizations to obtain information concerning JS service delivery and coordination with other agencies.

(10) The National MSFE Monitor Advocate shall perform the duties specified in § 658.700. As part of this function, he/she shall monitor the performance of regional offices in imposing corrective action. The National MSFW Monitor Advocate shall report any deficiencies in performance to the Administrator.

(11) The National MSFW Monitor Advocate shall establish routine and regular contacts with WIA 167 National Farmworker Jobs program organizations, other farmworker organizations and agricultural employers and/or employer organizations. He/she shall attend conferences or meetings of these groups wherever possible and shall report to the Administrator and the National Farm Labor Coordinated Enforcement Committee on these contacts when appropriate. The National MSFW Monitor Advocate shall include in the Annual Report recommendations as to how DOL might better coordinate JS and WIA 167 National Farmworker Jobs program services as they pertain to MSFWs.

(12) In the event that any State or Regional MSFW Monitor Advocate, enforcement agency or MSFW group refers a matter to the National MSFW Monitor Advocate which requires emergency action, he/she shall assist them in obtaining action by appropriate agencies and staff, inform the originating party of the action taken, and, upon request, provide written confirmation.

(13) Through all the mechanisms provided in this subpart, the National

MSFW Monitor Advocate shall aggressively seek to ascertain and remedy, if possible, systemic deficiencies in the provisions of JS services and protections afforded by these regulations to MSFWs. The National MSFW Monitor Advocate shall:

(i) Use the regular reports on complaints submitted by State agencies and ETA regional offices to assess the adequacy of these systems and to determine the existence of systemic deficiencies.

(ii) Provide technical assistance to ETA regional office and State agency staffs for administering the JS complaint system.

(iii) Recommend to the Administrator specific instructions for action by regional office staff to correct any JS-related systemic deficiencies. Prior to any ETA review of regional office operations concerning JS services to MSFWs, the National MSFW Monitor Advocate shall provide to the Administrator a brief summary of JS-related services to MSFWs in that region and his/her recommendations for incorporation in the regional review materials as the Administrator and ETA reviewing organization deem appropriate.

(iv) Recommend to the National Farm Labor Coordinated Enforcement Committee specific instructions for action by ESA and OSHA regional office staff to correct any non-JS-related systemic deficiencies of which he/she is aware.

[45 FR 39468, June 10, 1980, as amended at 71 FR 35523, June 21, 2006]

§ 658.603 ETA regional office responsibility.

(a) The Regional Administrator shall have responsibility for the regular review and assessment of State agency performance and compliance with JS regulations.

(b) The Regional Administrator shall review and approve annual program budget plans for the State agencies within the region. In reviewing the program budget plans the Regional Administrator shall consider relevant factors including the following:

(1) State agency compliance with JS regulations;

(2) State agency performance against the goals and objectives established in

the previous year's program budget plan;

(3) The effect which economic conditions and other external factors considered by the ETA in the resource allocation process may have had or are expected to have on State agency performance;

(4) State agency adherence to national program emphasis; and

(5) The adequacy and appropriateness of the program budget plan for carrying out JS programs.

(c) The Regional Administrator shall assess the overall performance of State agencies on an ongoing basis through desk reviews and the use of required reporting systems and other available information.

(d) As appropriate, Regional Administrators shall conduct or have conducted:

(1) Comprehensive on-site reviews of State agencies and their offices to review State agency organization, management, and program operations;

(2) Periodic performance reviews of State agency operation of JS programs to measure actual performance against the program budget plan, past performance, the performance of other State agencies, etc.;

(3) Audits of State agency programs to review State agency program activity and to assess whether the expenditure of grant funds has been in accordance with the approved budget. Regional Administrators may also conduct audits through other agencies or organizations or may require the State agency to have audits conducted;

(4) Validations of data entered into management information systems to assess:

(i) The accuracy of data entered by the State agencies into management information system;

(ii) Whether the State agencies' data validating and reviewing procedures conform to ETA instructions; and

(iii) Whether State agencies have implemented any corrective action plans required by the ETA to remedy deficiencies in their validation programs;

(5) Technical assistance programs to assist State agencies in carrying out JS regulations and programs;

(6) Reviews to assess whether the State agency has complied with correc-

tive action plans imposed by the ETA or by the State agency itself; and

(7) Random, unannounced field checks of a sample of agricultural work sites to which JS placements have been made through the clearance system to determine and document whether wages, hours, working and housing conditions are as specified on the job order. If regional office staff find reason to believe that conditions vary from job order specifications, findings should be documented on the JS Complaint Referral Form and provided to the State agency to be handled as a complaint under § 658.411(b).

(e) The Regional Administrator shall provide technical assistance to State agencies to assist them in carrying out JS regulations and programs.

(f) The Regional Administrator shall appoint a Regional MSFW Monitor Advocate who shall devote full time to the duties set forth in this subpart. The Regional MSFW Monitor Advocate shall:

(i) Review the effective functioning of the State MSFW Monitor Advocates in his/her region;

(ii) Review the performance of State agencies in providing the full range of JS services to MSFWs;

(iii) Take steps to resolve JS-related problems of MSFWs which come to his/her attention;

(iv) Recommend to the Regional Administrator changes in policy towards MSFWs;

(v) Review the operation of the JS complaint system; and

(vi) Serve as an advocate to improve service for MSFWs within JS. The Regional MSFW Monitor Advocate shall be a member of the Regional Farm Labor Coordinated Enforcement Committee.

(1) The Regional MSFW Monitor Advocate shall be appointed by the Regional Administrator after informing farmworker organizations and other organizations in the region with expertise concerning MSFWs of the opening and encouraging them to refer qualified applicants to apply through the federal merit system. The Regional MSFW Monitor Advocate shall have direct personal access to the Regional Administrator wherever he/she finds it necessary. Among qualified candidates,

individuals shall be sought who meet the criteria used in the selection of the State MSFW Monitor Advocates, as provided in § 653.108(b).

(2) The Regional Administrator shall ensure that staff necessary to fulfill effectively all the regional office responsibilities set forth in this subsection are assigned. The Regional MSFW Monitor Advocate shall notify the Regional Administrator of any staffing deficiencies and the Regional Administrator shall take appropriate action.

(3) The Regional MSFW Monitor Advocate within the first three months of their tenure shall participate in a training session(s) approved by the National office.

(4) At the regional level, the Regional MSFW Monitor Advocate shall have primary responsibility for (i) monitoring the effectiveness of the JS complaint system set forth at subpart E of this part; (ii) apprising appropriate State and ETA officials of deficiencies in the complaint system; and (iii) providing technical assistance to State MSFW Monitor Advocates in the region.

(5) At the ETA regional level, the Regional MSFW Monitor Advocate shall have primary responsibility for ensuring that State agency compliance with JS regulations as they pertain to services to MSFWs is monitored by the regional office. He/she shall independently assess on a continuing basis the provision of JS services to MSFWs, seeking out and using:

(i) Information from State MSFW Monitor Advocates, including all reports and other documents; (ii) program performance data; (iii) the periodic and other required reports from State JS offices; (iv) federal on-site reviews; (v) other reports prepared by the National office; (vi) information received from farmworker organizations and employers; and (vii) any other pertinent information which comes to his/her attention from any possible source. In addition, the Regional MSFW Monitor Advocate shall consider his/her personal observations from visits to JS offices, agricultural work sites and migrant camps. The Regional MSFW Monitor Advocate shall assist the Regional Administrator and other appropriate line officials in applying appro-

priate corrective and remedial actions to State agencies.

(6) The Regional Administrator's quarterly report to the National office shall include the Regional MSFW Monitor Advocate's summary of his/her independent assessment as required in paragraph (f)(5) of this section. The fourth quarter summary shall include an annual summary from the region. The summary also shall include both a quantitative and a qualitative analysis of his/her reviews and shall address all the matters with respect to which he/she has responsibilities under these regulations.

(7) The Regional MSFW Monitor Advocate shall review the activities and performance of the State MSFW Monitor Advocates and the State monitoring system in the region, and shall recommend any appropriate changes in the operation of the system to the Regional Administrator. The Regional MSFW Monitor Advocate's review shall include a determination whether the State MSFW Monitor Advocate (i) does not have adequate access to information, (ii) is being impeded in fulfilling his/her duties, or (iii) is making recommendations which are being consistently ignored by State agency officials. If the Regional MSFW Monitor Advocate believes that the effectiveness of any State MSFW Monitor Advocate has been substantially impeded by the State Administrator, other State office officials, or any Federal officials, he/she shall report and recommend appropriate actions to the Regional Administrator. Information copies of the recommendations shall be provided the National MSFW Monitor Advocate.

(8) The Regional MSFW Monitor Advocate shall be informed of all proposed changes in policy and practice within USES, including JS regulations, which may affect the delivery of services to MSFWs. He/she shall advise the Regional Administrator on all such proposed changes which, in his/her opinion, may adversely affect MSFWs or which may substantially improve the delivery of services to MSFWs. The Regional MSFW Monitor Advocate may also recommend changes in JS policy or regulations, as well as changes in the funding of State agencies and/or adjustments of reallocation

of the discretionary portions of funding formulae as they pertain to MSFWs.

(9) The Regional MSFW Monitor Advocate shall participate in the review and assessment activities required in this section and § 658.700 *et seq.* He/she, an Assistant, or another Regional MSFW Monitor Advocate, shall participate in national office and regional office on-site statewide reviews of JS services to MSFWs in States in the region. The Regional MSFW Monitor Advocate shall engage in the following activities in the course of participating in an on-site State agency review:

(i) He/she shall accompany selected outreach workers on their field visits;

(ii) He/she shall participate in a random field check of migrant camps or work sites where MSFWs have been placed on inter or intrastate clearance orders;

(iii) He/she shall contact local WIA 167 National Farmworker Jobs program organizations or other farmworker organizations as part of the on-site review, and shall conduct interviews with representatives of the organizations; and

(iv) He/she shall meet with the State MSFW Monitor Advocate and discuss the full range of the JS services to MSFWs, including the monitoring and complaint system.

(10) During the calendar quarter preceding the time of peak MSFW activity in each State, the Regional MSFW Monitor Advocate shall meet with the State MSFW Monitor Advocate and shall review in detail the State agency's capability for providing full services to MSFWs as required by JS regulations, during the upcoming harvest season. The Regional MSFW Monitor Advocate shall offer technical assistance and recommend to the State agency and/or the Regional Administrator any changes in State policy or practice that he/she finds necessary.

(11) The Regional MSFW Monitor Advocate each year during the peak harvest season shall visit each state in the region not scheduled for an on-site review during that fiscal year and shall:

(i) Meet with the State MSFW Monitor Advocate and other central office staff to discuss MSFW service delivery, and (ii) contact representatives of MSFW organizations to obtain infor-

mation concerning JS service delivery and coordination with other agencies and interested employer organizations.

(12) The Regional MSFW Monitor Advocate shall initiate and maintain regular and personal contacts, including informal contacts in addition to those specifically required by these regulations, with State MSFW Monitor Advocates in the region. In addition, the Regional MSFW Monitor Advocate shall have personal and regular contact with the National MSFW Monitor Advocate. The Regional MSFW Monitor Advocate shall also establish routine and regular contacts with WIA 167 National Farmworker Jobs program organizations, other farmworker organizations and agricultural employers and/or employer organizations in his/her region. He/she shall attend conferences or meetings of these groups wherever possible and shall report to the Regional Administrator and the Regional Farm Labor Coordinated Enforcement Committee on these contacts when appropriate. He/she shall also make recommendations as to how DOL might better coordinate JS and WIA 167 National Farmworker Jobs program services to MSFWs.

(13) The Regional MSFW Monitor Advocate shall attend MSFW-related public meeting(s) conducted in the region, pursuant to 29 CFR 42.20. Following such meetings or hearings, the Regional MSFW Monitor Advocate shall take such steps or make such recommendations to the Regional Administrator, as he/she deems necessary to remedy problem(s) or condition(s) identified or described therein.

(14) The Regional MSFW Monitor Advocate shall attempt to achieve regional solutions to any problems, deficiencies or improper practices concerning services to MSFWs which are regional in scope. Further, he/she shall recommend policies, offer technical assistance or take any other necessary steps as he/she deems desirable or appropriate on a regional, rather than state-by-state basis, to promote region-wide improvement in JS services to MSFWs. He/she shall facilitate region-wide coordination and communication regarding provision of JS services to MSFWs among State MSFW Monitor Advocates, State Administrators and

federal ETA officials to the greatest extent possible. In the event that any State or other Regional MSFW Monitor Advocate, enforcement agency, or MSFW group refers a matter to the Regional MSFW Monitor Advocate which requires emergency action, he/she shall assist them in obtaining action by appropriate agencies and staff, inform the originating party of the action taken, and, upon request, provide written confirmation.

(15) The Regional MSFW Monitor Advocate shall initiate and maintain such contacts as he/she deems necessary with Regional MSFW Monitor Advocates in other regions to seek to resolve problems concerning MSFWs who work, live or travel through the region. He/she shall recommend to the Regional Administrator and/or the National office inter-regional cooperation on any particular matter, problem, or policy with respect to which inter-regional action is desirable.

(16) The Regional MSFW Monitor Advocate shall establish regular contacts with the ESA and OSHA farmworker specialists in the region and, to the extent necessary, shall establish contacts with the staff of other DOL agencies represented on the Regional Farm Labor Coordinated Enforcement Committee. The Regional MSFW Monitor Advocate shall coordinate his/her efforts with specialists in the region to ensure that the policy specified in 29 CFR 42.20(c)(3) is followed.

(17) The Regional MSFW Monitor Advocate shall participate in the regional reviews of State agency Program Budget Plans, and shall comment to the Regional Administrator as to the adequacy of the affirmative action plans, the outreach plans, and other specific plans included therein.

[45 FR 39468, June 10, 1980, as amended at 71 FR 35523, June 21, 2006]

§ 658.604 Assessment and evaluation of program performance data.

(a) State agencies shall compile program performance data required by ETA, including statistical information on program operations.

(b) The ETA shall use the program performance data in assessing and evaluating whether the State agencies have

complied with JS regulations and their State agency program budget plans.

(c) In assessing and evaluating program performance data, the ETA shall act in accordance with the following general principles:

(1) The fact that the program performance data from a State agency, whether overall or relative to a particular program activity, indicate poor program performance does not by itself constitute a violation of JS regulations or of the State agency's responsibilities under its State agency program budget plan;

(2) Program performance data, however, may so strongly indicate that a State agency's performance is poor that the data may raise a presumption (*prima facie* case) that a State agency is violating JS regulations or the State agency program budget plan. A State agency's failure to meet the operational objectives set forth in the PBP shall raise a presumption that the agency is violating JS regulations and/or its PBP. In such cases the ETA shall afford the State agency an opportunity to rebut the presumption of a violation pursuant to the procedures at subpart H of this part.

(3) The ETA shall take into account that certain program performance data may measure items over which State agencies have direct or substantial control while other data may measure items over which the State agency has indirect or minimal control.

(i) Generally, for example, a State agency has direct and substantial control over the delivery of job services such as referrals to jobs, job development contacts, applicant counseling, referrals to supportive services and the conduct of field checks.

(ii) State agencies, however, have only indirect control over the outcome of services. State agencies, for example, cannot guarantee that an employer will hire a referred applicant, nor can they guarantee that the terms and conditions of employment will be as stated on a job order.

(iii) Outside forces, moreover, such as a sudden heavy increase in unemployment rates, a strike by State agency employees, or a severe drought or flood may skew the results measured by program performance data;